IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) S.B.CRIMINAL MISC. PETITION NO. 328/2005
(Smt. Tara Devi and Ors. Vs. Chandan Mal and Anr.)

(2) S.B.CRIMINAL MISC. PETITION NO. 453/2005
(Chandan Mal Vs. State of Rajasthan and Ors.)

Date of Order : 20/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. C.P.Soni for Smt. Tara Devi and Ors.
Mr. Rakesh Arora for Chandan Mal.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

Both these criminal misc. petitions under Section 482 Cr.P.C., are directed against the order dated 09.2.2005 passed by Sessions Judge, Pali (for short 'the revisional court' hereinafter) in Criminal Revision No. 53/2004 filed by Chandan Mal, the husband of petitioner No.1 Smt. Tara Devi and father of petitioners No. 2 and 3 in Petition No.328/05. Since both the petitions involve common question of law and facts between the same parties and arise out of the same order, with the consent of counsel for the parties, they are heard together and decided.

On an application filed by Smt. Tara Devi and Ors., under Section 125 Cr.P.C., by order dated 25.8.2004, the Additional Chief Judicial Magistrate, Pali (for short 'the trial court' hereinafter) in Criminal Misc. Case No.273/01 allowed the application and granted monthly allowance of maintenance at the rate of Rs. 1000/- per month in favour of Smt. Tara Devi and in favour of two minors Vikas and Kumari Prinka at the rate of Rs. 1000/- each per month from the date of application i.e. 19.12.2001. This order came to be challenged by husband Chandan Mal before the revisional court. The revisional court by the order impugned has maintained the order passed by the trial court to the extent granting monthly allowance of maintenance in favour of wife Tara Devi by the trial court however, modified the order of the trial court to the extent that the maintenance allowance is payable from the date of order passed by the trial court i.e. 25.8.2004 as also reduced the maintenance granted in favour of minors Vikas and Kumari Prinka from Rs.1000/- per month to Rs. 600/- per month that too from the date of order of the trial court.

Aggrieved by the order of revisional Court, petitioner wife Smt. Tara Devi and her minor son and daughter have filed the instant criminal misc. Petition being S.B.Cr.Misc.Petition No.328/05 and petitioner Chandanmal husband has filed petition

seeking reduction of maintenance allowance being S.B.Criminal Misc. Petition No. 453/05.

I have heard learned counsel for the parties. Carefully gone through the order passed by the revisional court and by the trial court as also record of the trial court.

It is contended by learned counsel for petitioners Tara Devi and ors. that the revisional court fell in error in reducing the maintenance allowance granted in favour of minors Vikas and Priyanka from Rs. 1000 to Rs. 600/- per month. It is further contended that without assigning any reason, the order of the trial court granting maintenance allowance from the date of application, has been modified by the revisional court and it has been ordered that the maintenance allowance is payable from the date of order of the trial court.

Learned counsel appearing for non-petitioner husband Chandan Mal submits that the petitioner is a teacher Grade-III and according to the salary certificate on record, his salary is Rs. 6000/- per month and therefore, the maintenance granted in favour of petitioners Smt. Tara Devi and two minors is on higher side.

I have given my thoughtful consideration to the rival

submissions made by the counsel for the parties.

The trial court granted maintenance at the rate of Rs. 1000/- per month in favour of Smt. Tara Devi as also Rs. 1000/- each per month in favour of two minors Vikas and Priyanka. So far as two minors Vikas and Priyanka are concerned, they were of 7 years and 3 years respectively at the time of filing of the application. The revisional court taking into account the other liabilities of the husband Chandan Mal, while maintaining the maintenance in favour of Smt. Tara Devi, reduced the maintenance granted in favour of two minors Vikas and Priyanka from Rs. 1000/- to Rs. 600/- each per month. In my view, keeping in view, the income of husban Chandan Mal and the age of two minors, a sum of Rs. 600/- per month each as modified by the revisional court is just and proper maintenance. However, the order of revisional court to the extent making the maintenance payable from the date of order of the trial court without assigning any reason, is per se erroneous. In view of the decision of Division Bench of this Court in Smt. Savita Sharma Vs. Shri Kishan Murari, 1990 (1) RLR, 400, wherein this Court held that the maintenance allowance should be granted from the date of application, in my view the trial court has rightly allowed the maintenance from the date of application and to this extent the order passed by the revisional court deserves to be

set aside.

So far as the petition filed by Chandan Mal seeking reduction of maintenance, in my view the petition has no force. The revisional court has already reduced the maintenance granted in favour of two minors Vikas and Priyanka from Rs. 1000/- each per month to Rs. 600/- each per month and therefore, no further reduction is warranted. Allowing Rs. 1000/- per month in favour of wife Smt. Tara Devi cannot be said to be on higher side, on the contrary, it is hardly an amount to maintain an adult person.

Learned counsel for Chandan Mal submits that subsequently, on an application filed by Chandan Mal under Section 9 of the Hindu Marriage Act, an ex-party decree for restitution of conjugal rights has been passed and in the criminal case lodged by Smt. Tara Devi for the offence under Section 498-A IPC, husband Chandan Mal has been acquitted. These are subsequent events which have no bearing on the orders passed by the courts below.

Consequently, the misc. petition filed by Smt. Tara Devi and Ors. being S.B.Criminal Misc. Petition No. 328/05 is partly allowed and while maintaining the order of the revisional

court awarding maintenance at the rate of Rs. 1000/- per month in favour of wife Smt. Tara Devi and at the rate of Rs.600/- per month each in favour of two minors Vikas and Priyanka, the order of revisional court directing payment of maintenance from the date of order of the trial court is set aside and the order of the trial court granting maintenance from the date of application i.e. 19.12.2001 is restored.

The criminal misc. petition No.453/05 is devoid of any merit and is therefore, dismissed. Stay petitions in both the cases stand disposed of.

(H.R.PANWAR),J.

rp